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10 Attorneys for Defendant, Counter-Claimant and Cross-Claimant,

11 **WESTCHESTER FIRE INSURANCE COMPANY**

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 LENSRAFTERS, INC.; and EYEXAM OF  
15 CALIFORNIA, INC.,

16 Plaintiffs,

17 vs.

18 LIBERTY MUTUAL FIRE INSURANCE  
19 COMPANY; EXECUTIVE RISK SPECIALTY  
20 INSURANCE COMPANY; UNITED STATES  
21 FIRE INSURANCE COMPANY; MARKEL  
22 AMERICAN INSURANCE COMPANY; and  
23 WESTCHESTER FIRE INSURANCE  
24 COMPANY,

25 Defendants.

26 AND RELATED COUNTER AND CROSS-  
27 CLAIMS

CASE NO. C-07-2853 SBA

**E-FILING**

**STIPULATION TO DISMISS WITHOUT  
PREJUDICE WESTCHESTER FIRE  
INSURANCE COMPANY'S COUNTER-  
CLAIM AND CROSS-CLAIM;  
[PROPOSED] ORDER THEREON**

Courtroom: 3  
The Hon. Sandra Brown Armstrong

28 WHEREAS, on or about July 18, 2007, Defendant, Counter-Claimant and Cross-Claimant,  
WESTCHESTER FIRE INSURANCE COMPANY ("Westchester Fire") filed and served its Counter-Claim And  
Cross-Claim For Declaratory Relief (the "Counter/Cross Claim") against LENSRAFTERS, INC. and EYEXAM  
OF CALIFORNIA, INC (collectively "LensCrafters") as Counter-Defendants, and against LIBERTY MUTUAL  
INSURANCE COMPANY ("Liberty Mutual"), EXECUTIVE RISK SPECIALTY INSURANCE COMPANY

1 ("Executive Risk"), UNITED STATES FIRE INSURANCE COMPANY ("U.S. Fire"), and MARKEL  
 2 AMERICAN INSURANCE COMPANY ("Markel American"), as Cross-Defendants (collective, the "Cross-  
 3 Defendants");

4 WHEREAS, LensCrafters and various of the Cross-Defendants have heretofore filed and served answers  
 5 to Westchester Fire's Counter/Cross Claim;

6 WHEREAS, a conditional settlement has been reached by and between Westchester Fire and LensCrafters  
 7 as respects both this case and the underlying class action lawsuit, *Snow v. LensCrafters, Inc., et al.*, San  
 8 Francisco Superior Court Case No. CGC-02-40554 ("*Snow*") out of which the instant action arises;

9 WHEREAS, said conditional settlement has obviated the need for Westchester Fire to maintain its  
 10 Cross/Counter Claim, Westchester Fire desires to dismiss same without prejudice at this time in order to effectuate  
 11 said conditional settlement, and that when the *Snow* settlement is finally approved, Westchester Fire will file a  
 12 dismissal of same with prejudice;

13 NOW THEREFORE, Westchester Fire, LensCrafters, Liberty Mutual, Executive Risk, U.S. Fire, and  
 14 Markel American, by and through their respective attorneys of record, do hereby stipulate that Westchester Fire  
 15 may hereby dismiss its Counter/Cross Claim without prejudice.  
 16

17 DATED: February 12, 2008

HARRIS, GREEN & DENNISON  
 A Professional Corporation

19 By

  
 ROBERT D. DENNISON, ESQ.  
 GARY L. GREEN, ESQ.

Attorneys for Defendant, Counter-Claimant and  
 Cross-Claimant, WESTCHESTER FIRE  
 INSURANCE COMPANY

23 DATED: February \_\_, 2008

HELLER EHRMAN LLP

25 By

RICHARD DeNATALE, ESQ.  
 CELIA M. JACKSON, ESQ.

Attorneys for Plaintiffs and  
 Counter-Defendants, LENS-CRAFTERS, INC, and  
 EYEXAM OF CALIFORNIA, INC.,

1 ("Executive Risk"), UNITED STATES FIRE INSURANCE COMPANY ("U.S. Fire"), and MARKEL  
2 AMERICAN INSURANCE COMPANY ("Markel American"), as Cross-Defendants (collective, the "Cross-  
3 Defendants");

4 WHEREAS, LensCrafters and various of the Cross-Defendants have heretofore filed and served answers  
5 to Westchester Fire's Counter/Cross Claim;

6 WHEREAS, a conditional settlement has been reached by and between Westchester Fire and LensCrafters  
7 as respects both this case and the underlying class action lawsuit, *Snow v. LensCrafters, Inc., et al.*, San  
8 Francisco Superior Court Case No. CGC-02-40554 ("*Snow*") out of which the instant action arises;

9 WHEREAS, said conditional settlement has obviated the need for Westchester Fire to maintain its  
10 Cross/Counter Claim, Westchester Fire desires to dismiss same without prejudice at this time in order to effectuate  
11 said conditional settlement, and that when the *Snow* settlement is finally approved, Westchester Fire will file a  
12 dismissal of same with prejudice;

13 NOW THEREFORE, Westchester Fire, LensCrafters, Liberty Mutual, Executive Risk, U.S. Fire, and  
14 Markel American, by and through their respective attorneys of record, do hereby stipulate that Westchester Fire  
15 may hereby dismiss its Counter/Cross Claim without prejudice.  
16

17 DATED: February 12, 2008

HARRIS, GREEN & DENNISON  
A Professional Corporation

19 By

20 ROBERT D. DENNISON, ESQ.  
21 GARY L. GREEN, ESQ.

22 Attorneys for Defendant, Counter-Claimant and  
Cross-Claimant, WESTCHESTER FIRE  
INSURANCE COMPANY

23 DATED: February 22, 2008

HELLER EHRMAN LLP

25 By

26 RICHARD DeNATALE, ESQ.  
27 CELIA M. JACKSON, ESQ.

28 Attorneys for Plaintiffs and  
Counter-Defendants, LENS CRAFTERS, INC., and  
EYEXAM OF CALIFORNIA, INC.,

1  
2 DATED: February <sup>14</sup>\_\_\_\_\_, 2008

ROSS, DIXON & BELL, LLP

3  
4 By /s/ Terrence R. McInnis  
5 TERRENCE R. McINNIS, ESQ.  
6 MONIQUE M. FUENTES, ESQ.  
7 Attorneys for Defendant and Counter-Defendant,  
EXECUTIVE RISK SPECIALTY INSURANCE COMPANY

8 DATED: February 14\_\_\_\_\_, 2008

WILLOUGHBY, STUART & BENING

9  
10 By /s/ Alex F. Stuart  
11 ALEX F. STUART, ESQ.  
12 Attorneys for Defendant and Counter-Defendant,  
LIBERTY MUTUAL INSURANCE COMPANY

13 DATED: February 22\_\_\_\_\_, 2008

SQUIRE, SANDERS & DEMPSEY, L.L.P.

14  
15 By Mark Craig Goodman - Esq.  
16 MARK CRAIG GOODMAN, ESQ.  
17 AMY ROSE, ESQ.  
18 Attorneys for Defendant and Counter-Defendant,  
UNITED STATES FIRE INSURANCE COMPANY

19 DATED: February \_\_\_\_\_, 2008

LONG & LEVIT, LLP

20  
21 By \_\_\_\_\_  
22 CHIP COX, ESQ.  
23 IRENE YESOWITCH, ESQ.  
24 Attorneys for Defendant and Counter-Defendant,  
MARKEL AMERICAN INSURANCE COMPANY

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DATED: February \_\_\_\_\_, 2008

ROSS, DIXON & BELL, LLP

By  
TERRENCE R. McINNIS, ESQ.  
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DATED: February \_\_\_\_\_, 2008

WILLOUGHBY, STUART & BENING

By  
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Attorneys for Defendant and Counter-Defendant,  
LIBERTY MUTUAL INSURANCE COMPANY

DATED: February \_\_\_\_\_, 2008

SQUIRE, SANDERS & DEMPSEY, L.L.P.

By  
MARK CRAIG GOODMAN, ESQ.  
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UNITED STATES FIRE INSURANCE COMPANY

DATED: February 22, 2008

LONG & LEVIT, LLP

By *Chip Cox*  
CHIP COX, ESQ.  
IRENE YESOWITCH, ESQ.  
Attorneys for Defendant and Counter-Defendant,  
MARKEL AMERICAN INSURANCE COMPANY

//  
//;

**ORDER**

Good cause appearing therefor, IT IS HEREBY ORDERED that the Counter-Claim and Cross-Claim of Defendant, Counter-Claimant and Cross-Claimant, Westchester Fire Insurance Company is hereby dismissed without prejudice.

DATED: February \_\_, 2008

\_\_\_\_\_  
United States District Judge

**PROOF OF SERVICE**

I, SHIRLEY AOKI, am employed in the aforesaid county, State of California: I am over the age of 18 years and not a party to the within action: my business address is 5959 West Century Boulevard, Suite 1100, Los Angeles, California 90045.

On February 25, 2008, I served the following document described as:

**STIPULATION TO DISMISS WITHOUT PREJUDICE WESTCHESTER  
FIRE INSURANCE COMPANY'S COUNTER-CLAIM AND CROSS-CLAIM  
[PROPOSED] ORDER THEREON**

**VIA THE UNITED STATES DISTRICT COURT ELECTRONIC FILING SERVICE** on interested parties in this action set forth below:

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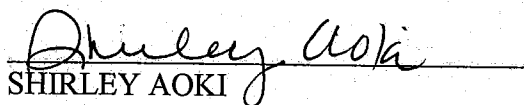
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Email: [mfuentes@rdblaw.com](mailto:mfuentes@rdblaw.com)

Attorneys for Defendant,

Executive Risk Specialty Insurance Company

Executed on February 25, 2008, at Los Angeles, California. I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
SHIRLEY AOKI